



July 10, 2013

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: MB Docket No. 12-3

Dear Ms. Dortch:

The undersigned spoke today with Ms. Sarah Whitesell, Media Legal Advisor to Chairwoman Mignon Clyburn, regarding the above-captioned proceeding and in particular the letter from Senators John McCain (R-AZ) and Richard Blumenthal (D-CT) suggesting that the Commission move the Notice of Inquiry to a Notice of Proposed Rulemaking. In addition to this procedural issue, the following substantive issues were discussed:

1. the extent to which lifting the Sports Blackout Rule would have any practical effect, given (a) restrictive terms of retransmission consent agreements limiting MVPDs' ability to use a broadcaster's signal in out-of-market designated market areas (DMAs), and (b) compulsory copyright licensing regimes that limit MVPDs' ability to import distant network signals to households throughout a given DMA;
2. the extent to which the Commission has statutory authority to revise the sports blackout rule, given the fact—as pointed out by Senators McCain and Blumenthal—that Congress never directed the Commission to issue the Sports Blackout Rule in the first place (and only directed the Commission to establish parity between Direct Broadcast Satellite and cable sports blackout regimes); and
3. the importance to consumers generally and sports fans in particular in having publicly subsidized sports events made as widely available as possible.

The undersigned also provided the text of the McCain/Blumenthal letter, available at <http://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-calls-on-fcc-to-end-sports-blackout-rule>.

Sincerely,

/s/ \_\_\_\_\_

David Goodfriend  
Sports Fans Coalition

Cc: Sarah Whitesell, Media Legal Advisor, Chairwoman Mignon Clyburn

Attachment

**FCC Proceeding to Consider Eliminating the Sports Blackout Rule**  
**Summary of Comments and Replies by Sports Fans Coalition, Public Knowledge,  
National Consumers League, Media Access Project, League of Fans**

- 1) The Commission should eliminate the sports blackout rule.
  - a. Unnecessary, anti-consumer public subsidy
  - b. Leagues should use private negotiations rather than public regulations
- 2) Fans, particularly elderly and disabled ones, oppose government policies supporting blackouts.
  - a. Many elderly, disabled cannot attend games in person and rely on TV
- 3) No compelling economic rationale supports sports blackouts
  - a. NFL has provided no actual evidence that blackouts significantly increase ticket sales
  - b. Top sports economists argue “no factual basis to the claim that the NFL would suffer a significant adverse effect”
- 4) Eliminating Sports Blackout rule will not migrate more sports to pay TV.
  - a. Claim is based on false premise that blackouts significantly affect attendance and revenues
  - b. Changing blackout policy will not alter relative attractiveness of broadcast or pay TV to the NFL
  - c. NFL and broadcasters trying to have it both ways: they say ending blackout rule would lead to migration of pro sports to cable, but NFL down-plays economic significance of blackouts
- 5) Blackouts won’t necessarily end if Commission eliminates Sports Blackout Rule
  - a. Compulsory copyright statutes curtail pay TV providers from carrying games
  - b. satellite providers prohibited from importing game from distant market
  - c. cable providers would have to pay six months of copyright fees for one game
  - d. Network non-duplication rule blocks blacked out games on broadcast networks
    - i. All free over-the-air games in NFL on Fox, NBC or CBS
  - e. Broadcasters would likely invoke retransmission consent to limit out-of-market use of their signals
- 6) Blackouts may end, however, if NFL forced to negotiate for them in free market
  - a. Leagues have contracts today with all major pay-TV providers and can bargain for blackout protection if they so choose.
  - b. NFL claims pay TV providers “likely would resist inclusion of any contractual alternative to sports blackout rule”
  - c. Why should government have to uphold leagues’ blackout policies, especially when they haven’t shown evidence of economic harm?
- 7) Commission should open rule-making proceeding
  - a. Top sports economists explain market has changed over four decades
  - b. compulsory copyright statutes and regulations have changed in four decades
  - c. thousands of fans have written in support of ending rule

**Limitations on Pay-TV Providers Importing an  
Out-of-Market Broadcast Signal to  
Provide Fans with a Locally Blacked Out Game**

	Cable Company	DISH Network	DIRECTV
Compulsory copyright statutory restrictions	Sec. 111 makes market-wide importation cost-prohibitive (rate of up to 3.75% of revenue; carriage could trigger payment for entire 6-month period)	If-Locals-No-Distant rule precludes distant network signals to all 210 DMAs served with locals by DISH, which includes major media markets with sports stadiums	If-Locals-No-Distants rule applies because DIRECTV provides locals in major media markets with sports stadiums. Only exception might be grandfathered distant network signal subscribers
Network Non-Duplication Rule applies?	Yes—any game on network broadcast cannot be imported	Yes	Yes
Retransmission consent limitations imposed by out-of-market broadcaster?	Probably—out-of-market station retransmission consent agreements likely restrict out-of-market use of signal	Probably	Probably